

105TH CONGRESS
2D SESSION

H. CON. RES. 299

Expressing the sense of Congress that executive departments and agencies must maintain the division of governmental responsibilities between the national government and the States that was intended by the framers of the Constitution, and must ensure that the principles of federalism established by the framers guide the executive departments and agencies in the formulation and implementation of policies.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1998

Mr. COLLINS (for himself, Mr. PAUL, Mrs. CHENOWETH, Mr. ISTOOK, Mr. SKEEN, Mr. HUTCHINSON, Mr. ENSIGN, Mr. DEAL of Georgia, Mr. NORWOOD, Mr. GOODE, Mr. POMBO, Mr. DOOLITTLE, Mr. MCINTOSH, Mr. WAMP, Mr. BLUNT, Mr. CALLAHAN, Mr. ROHRABACHER, Mr. BOB SCHAFFER, Mrs. LINDA SMITH of Washington, and Mr. LATOURETTE) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

CONCURRENT RESOLUTION

Expressing the sense of Congress that executive departments and agencies must maintain the division of governmental responsibilities between the national government and the States that was intended by the framers of the Constitution, and must ensure that the principles of federalism established by the framers guide the executive departments and agencies in the formulation and implementation of policies.

Whereas federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government;

Whereas the people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States;

Whereas all other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people as the tenth amendment to the Constitution requires;

Whereas the people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives;

Whereas in most areas of governmental concern, the States uniquely possess the constitutional authority, resources, and the competence to discern the sentiments of the people and to govern accordingly;

Whereas the nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires;

Whereas acts of the national government—whether executive, legislative, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the framers;

Whereas policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local govern-

ments, and private associations to achieve their personal, social, and economic objectives through cooperative effort; and

Whereas in the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
 2 *concurring)*, That executive departments and agencies
 3 should adhere, to the extent permitted by law, to the fol-
 4 lowing criteria when formulating and implementing poli-
 5 cies that have federalism implications:

6 (1) There should be strict adherence to con-
 7 stitutional principles. Executive departments and
 8 agencies should closely examine the constitutional
 9 and statutory authority supporting any Federal ac-
 10 tion that would limit the policymaking discretion of
 11 the States, and should carefully assess the necessity
 12 for such action. To the extent practicable, the States
 13 should be consulted before any such action is imple-
 14 mented.

15 (2) Federal action limiting the policymaking
 16 discretion of the States should be taken only where
 17 constitutional authority for the action is clear and
 18 certain, and the national activity is necessitated by
 19 the presence of a problem of national scope.

1 (3) It is important to recognize the distinction
2 between problems of national scope (which may jus-
3 tify Federal action) and problems that are merely
4 common to the States (which will not justify Federal
5 action because individual States, acting individually
6 or together, can effectively manage such issues).

7 (4) Constitutional authority for Federal action
8 is clear and certain only when authority for the ac-
9 tion may be found in a specific provision of the Con-
10 stitution, when there is no provision in the Constitu-
11 tion prohibiting Federal action, and when the action
12 does not encroach upon authority reserved to the
13 States.

14 (5) With respect to national policies adminis-
15 tered by the States, the national government should
16 grant the States the maximum administrative discre-
17 tion possible. Intrusive Federal oversight of State
18 administration is neither necessary nor desirable.

19 (6) When undertaking to formulate and imple-
20 ment policies that have federalism implications, exec-
21 utive departments and agencies should—

22 (A) encourage States to develop their own
23 policies to achieve program objectives and to
24 work with appropriate officials in other States;

1 (B) refrain, to the maximum extent pos-
2 sible, from establishing uniform, national stand-
3 ards for programs and, when possible, defer to
4 the States to establish standards; and

5 (C) when national standards are required,
6 consult with appropriate officials and organiza-
7 tions representing the States in developing
8 those standards.

9 (7) The following special requirements for pre-
10 emption of State law should be observed:

11 (A) To the extent permitted by law, execu-
12 tive departments and agencies should construe,
13 in regulations and otherwise, a Federal statute
14 to preempt a State law only when the statute
15 contains an express preemption provision, when
16 there is some other firm and palpable evidence
17 compelling the conclusion that the Congress in-
18 tended preemption of State law, or when the ex-
19 ercise of State authority directly conflicts with
20 the exercise of Federal authority under the
21 Federal statute.

22 (B) If a Federal statute does not preempt
23 State law, executive departments and agencies
24 should construe any authorization in the statute
25 for the issuance of regulations as authorizing

1 preemption of State law by rulemaking only
2 when the statute expressly authorizes issuance
3 of preemptive regulations or when there is some
4 other firm and palpable evidence compelling the
5 conclusion that the Congress intended to dele-
6 gate to the department or agency the authority
7 to issue regulations preempting State law.

8 (C) Any regulatory preemption of State
9 law should be restricted to the minimum level
10 necessary to achieve the objectives of the stat-
11 ute pursuant to which the regulations are pro-
12 mulgated.

13 (D) When an executive department or
14 agency foresees the possibility of a conflict be-
15 tween State law and federally protected inter-
16 ests within its area of regulatory responsibility,
17 the department or agency should consult, to the
18 extent practicable, with appropriate officials
19 and organizations representing the States in an
20 effort to avoid such a conflict.

21 (E) When an executive department or
22 agency proposes to act through adjudication or
23 rulemaking to preempt State law, the depart-
24 ment or agency should provide all affected

- 1 States notice and an opportunity for appro-
- 2 priate participation in the proceedings.

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